



## DEPARTMENT OF PERSONNEL

### ADMINISTRATIVE REGULATION NO. 133(A)

#### Emergency Family and Medical Leave Expansion Act (EFMLEA)

*Issued:* May 12, 2020

#### I. Purpose

The Families First Coronavirus Response Act includes provisions related to the Emergency Family and Medical Leave Expansion Act (EFMLEA). The provisions of the EFMLEA are effective April 1, 2020. It applies to leave taken between April 1, 2020 and December 31, 2020.

#### II. Scope

This act provides a new form of Family and Medical Leave (FML) for eligible employees who are unable to work or telework due to the need for leave to care for a *son or daughter* whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 related reasons.

#### III. Definitions

- (A) **Expanded Family and Medical Leave (EFML):** A new form of paid Family and Medical Leave (FML) for eligible employees who are unable to work or telework due to the need to leave to care for a *son or daughter* whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 related reasons.
- (B) **Regular Rate:** An employee's hourly rate of pay based upon the total remuneration in a *workweek*. The *regular rate* for each week is calculated using the following formula:

$$\begin{array}{rcl} (\text{Bi-Weekly Rate} \div 2) & \} & \\ + (\text{Education Incentive} \div 2) & \} & \\ + (\text{On-Call} \div 2) & \} & \div \text{Hours Worked Week 1} \\ + (\text{Weekend Differential week 1}) & \} & (\text{Typically 40}) \\ + (\text{Shift Differential week 1}) & \} & \end{array}$$

- (C) **Son or Daughter:** For the purposes of this Regulation, a “*son or daughter*” is an employee’s own child, under the age of 18, which includes his/her biological, adopted, or foster child, stepchild, a legal ward, or a child for whom the employee is standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child; or an adult *son or daughter* (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability and (2) is incapable of self-care because of that disability.
- (D) **Unable to Work:** An employee is only considered unable to work if the employer has work for the employee to do and the employee is prevented from performing such work either at the actual jobsite or by means of telework due to the need to care for a *son or daughter* whose school or place of care has been closed whose childcare provider is unavailable due to reasons related to COVID-19.
- (E) **Workweek:** A fixed and regularly recurring period of one hundred sixty-eight (168) hours: seven (7) consecutive 24-hour periods.

#### IV. **Eligibility**

Under the EFMLEA you qualify for this leave if you are unable to work and:

- (A) You have been employed for at least the thirty (30) consecutive calendar days immediately prior to the day the leave is to begin;
- (B) You are caring for a *son or daughter* whose school or place of care is closed whose childcare provider is unavailable for reasons related to COVID-19; and
- (C) The leave is taken on or after April 1, 2020. If you began leave before April 1, 2020 and are or were still on leave after that date, only the portion of leave which occurred on or after that date is eligible for **EFML**.

#### V. **Exceptions**

Emergency Responders and Health Care Providers

- (A) Because of their essential role in protecting the health, safety and welfare of the citizens of the City of St. Louis during this pandemic, this Act authorizes the City to deny leave to individuals who fall into the categories of Emergency Responders or Health Care Providers.
- (B) Employees in these categories who will not be permitted to take leave under the Act will be notified by their appointing authority. Such a notice should also advise the employee(s) that these exclusions do not affect their eligibility for FML under the terms of the FMLA in place prior to FFCRA enactment.

- (C) Appointing authorities shall notify the Director of Personnel of the names and classifications of all Emergency Responders and Health Care Providers they deem to be essential and exempt from the provisions of this Act.

## VI. Leave Amount

The amount of leave an employee is entitled to under the EFMLEA is as follows:

- (A) A full-time employee who works a regularly-scheduled 5-day, 40-hour *workweek* is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time or per-performance employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
- (B) An employee who has been employed with the City for less than 30 consecutive calendar days immediately prior to the date the requested **EFML** is to begin is not eligible for leave under the EFMLEA.
- (C) The first two weeks (up to 80 hours) of leave are unpaid but an eligible employee may qualify for Paid Sick Leave (PSL) under the provisions of the Emergency Paid Sick Leave Act (EPSLA).
- (D) An Employee who is eligible for **EFML** but has exhausted all available PSL under the provisions of the EPSLA must use available accrued vacation leave during the first two unpaid weeks of **EFML** before being placed in leave without pay status in accordance with Department of Personnel Administrative Regulation No. 133 and the Compensation Ordinance.
- (E) An Employee will be paid at 2/3 his/her *regular rate* for all hours he/she is regularly scheduled to work, up to \$200 per day and \$10,000 in the aggregate over the 10-week period following the first two (2) unpaid weeks.
- (F) Leave may be taken intermittently up to the limits indicated in Sections VI(A) and VI(E), if permitted by the employee's appointing authority.
- (G) As provided in Department of Personnel Administrative Regulation No. 133, an employee is eligible for up to 12 weeks of FML in a 12-month period. Since **EFML** under the EFMLEA is a form of FML, any **EFML** used under the EFMLEA, as well as any FML an employee may have used in the prior 12-months will count towards that 12-week limit. Therefore, if an employee has used any FML in the past 12 months preceding the request for **EFML**, the amount of **EFML** available to them will be limited to the balance of FML available.

## **VII. Calculating Pay**

**EFML** taken to care for a *son or daughter* whose school or place of care is closed or whose childcare provider is unavailable for reasons related to COVID-19 will be paid at 2/3 the employee's *regular rate*.

- (A) An employee who is eligible for **EFML** should receive a “dock” in hours equivalent to 1/3 of the number of hours of **EFML** the employee is taking, rounded to two decimal places.
- (B) Regardless of the employee's *regular rate*, in no instance shall the remaining 2/3 pay be more than \$200 per day and/or \$10,000 total over a ten-week period.

## **VIII. Request and Documentation**

Requests for **EFML** shall be completed and submitted to the employee's appointing authority. The EFMLEA requires that the employee include the following information on or with their request for **EFML**.

- (A) The employee's name;
- (B) The date(s) for which said leave is requested;
- (C) A statement that the leave is needed to care for a *son or daughter* of such employee whose school or place of care has been closed or whose childcare provider is unavailable due to reasons related to COVID-19;
- (D) A statement that the employee is unable to work, including telework because of the need to care for a *son or daughter* of such employee whose school or place of care is closed or whose childcare provider is unavailable due to reasons related to COVID-19;
- (E) The name and date of birth of the child(ren) to be cared for;
- (F) The name of the school, place of care, or child care provider that closed or became unavailable due to COVID-19 reasons;
- (G) Notice of closure or unavailability from the child's school or child care provider, which may include posted notices on the school or daycare website or notices emailed to the employee from the school or daycare provider, or an article from print or online news media;
- (H) A statement that no other suitable person is available to care for the child(ren) during the period requested for EFMLEA leave; and
- (I) If the child is older than fourteen (14), a statement describing the special circumstances making it necessary to be absent to care for the child.

## **IX. Benefits**

The employee's health care coverage while taking **EFML** shall continue. However, the employee must continue making normal contributions to their health care plan(s) in accordance with the provisions of Section VIII of Department of Personnel Administrative Regulation No. 133 (Family and Medical Leave).

**X. General Provisions**

- (A) Whether leave is granted or denied, payroll clerks shall keep on file, for a period of not less than four (4) years, all documentation provided regarding **EFML**, including, but not limited to:
- (1) Request forms and any supplemental documents;
  - (2) Documented oral statements provided by the employee to support his/her request for **EFML**;
  - (3) Any written justification for denial of **EFML**;
  - (4) Documentation to show how the amount of qualified **EFML** wages were figured;
  - (5) Documentation to show how it was determined that the employee was qualified to receive **EFML**.
- (B) This is a summary of employees' rights under this new law. The provisions of the Act shall control.
- (C) The appointing authority or his/her designee should consult with the Department of Personnel (314-622-3563) with questions they may have regarding this regulation.

DEPARTMENT OF PERSONNEL

Richard R. Frank  
Director of Personnel